

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHILDREN'S LEGAL SERVICES PLLC,

Plaintiff,

-vs-

Case No. 07-10255
Hon. Avern Cohn

SIMON KRESCH,

Defendant/Counter-Plaintiff,

SAIONTZ, KIRK, & MILES, P.A., and
JOHN DOES 1-10,

Defendants.

**AMENDED MEMORANDUM AND ORDER DENYING
PLAINTIFF'S MOTION TO TERMINATE OR LIMIT DEPOSITION
AND GRANTING DEFENDANT'S MOTION TO COMPEL DISCOVERY**

This is a trademark case. On December 12, 2007, Defendant Simon Kresch sought to depose Plaintiff's counsel Michael Lisi. The deposition was aborted after Lisi declined to answer questions that his counsel said went beyond the legitimate scope of inquiry. The parties then filed cross-motions: Plaintiff seeks to terminate or limit the deposition, and Defendant seeks to compel Lisi to go forward with the deposition. The Court heard arguments on the motions on January 30, 2008.

Lisi filed numerous trademark applications with the United States Patent and Trademark Office on Plaintiff's behalf. Plaintiff concedes that information related to these applications is at least arguably relevant to the issues in the case. Because

Plaintiff intended that the information it provided to Lisi as part of the application process be communicated to the Trademark Office, the relevant communications between Plaintiff and Lisi are not privileged. "Wherever the matters communicated to the attorney are intended by the client to be made public or revealed to third persons, obviously the element of confidentiality is lacking." JOHN W. STRONG ET AL., McCORMICK ON EVIDENCE § 91 (5th ed. 1999).

For the reasons stated above and on the record on January 30, 2008, Plaintiff's motion is DENIED and Defendant's motion is GRANTED. The scope of the deposition shall be limited to trademark applications and affidavits that Lisi filed on Plaintiff's behalf as well as Lisi's background as a trademark lawyer.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: February 1, 2008

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, February 1, 2008, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160